ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION II

CACR 05-1377

SEPTEMBER 20, 2006

WAYNE EUGENE WHITE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION
[NO. CR2005-474]

HONORABLE CHRISTOPHER CHARLES PIAZZA, JUDGE

AFFIRMED

Appellant Wayne Eugene White was convicted by a jury of aggravated robbery and misdemeanor theft of property. He was sentenced to ten years in prison for the aggravated robbery and fined $50.00 for the theft. Mr. White appeals only from the aggravated robbery conviction, arguing that there was insufficient evidence to support the conviction. We affirm.

When appellant challenges the sufficiency of the evidence, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the State and affirm if there is substantial evidence to support the conviction. *Brown v. State*, 74 Ark. App. 281, 47 S.W.3d 314 (2001). Substantial evidence is that which has sufficient force and

character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id*. Only evidence that supports the conviction will be considered. *Id*.

The victim in this case was Ronald Ross, who worked as a cashier for a Shell convenience store in Little Rock. Mr. Ross was working the late shift on December 21, 2004, and Mr. White entered the store at about 2:00 a.m. According to Mr. Ross, Mr. White went into the bathroom, and when he came out he grabbed two thirty-packs of beer and left the store. Mr. Ross then followed Mr. White to his car in an attempt to recover the beer.

Mr. Ross testified that he said, "Give me the beer back, sir," and tried to grab it from Mr. White. At that point Mr. White said that he had a gun and was reaching up under his jacket. Mr. Ross testified that "I thought he was reaching for his gun," and "I got scared and ran back in the store," where he advised a co-worker to call the police. Mr. White drove away but the police later apprehended him.

On cross-examination, Mr. Ross acknowledged that Mr. White was probably bluffing about having a gun. However, he also testified that he did not know whether or not Mr. White had a gun, and stated, "If somebody says they have a gun I'm not going to take a chance." Mr. Ross indicated that had Mr. White not scared him with the statement that he had a gun, he would have gotten the beer back.

On re-direct examination, Mr. Ross testified:

> I did not wait around to see whether or not he meant what he said because I'm scared of guns, so I immediately went back in the store. When he reached into his jacket that made me think even more so that he had a gun. I felt threatened. I didn't know if he was bluffing or not, so I wasn't going to take a chance.

Mr. White's argument on appeal is that there was no substantial evidence to support his aggravated robbery conviction. Pursuant to Ark. Code Ann. § 5-12-102(a) (Repl. 2006), "A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to employ physical force upon another person." It becomes aggravated robbery if the person represents by word or conduct that he is armed with a deadly weapon. *See* Ark. Code Ann. § 5-12-103(a)(2) (Repl. 2006). Mr. White contends that, while there was testimony by the victim that White stated he had a gun, the victim also testified that he thought Mr. White was bluffing, and thus the State failed in its burden of proof.

In support of his argument, Mr. White relies on *Fairchild v. State*, 269 Ark. 273, 600 S.W.2d 16 (1980). In that case, the supreme court found insufficient evidence to support the appellant's aggravated robbery conviction, and reasoned:

> Appellant's next argument, however, that the evidence fails to establish that he represented by word or conduct that he was armed with a deadly weapon has merit. We are not persuaded that appellant's hand under his shirt, even with the admitted intention of conveying to the victim that he was armed, is sufficient representation to satisfy the requirements of aggravated robbery in the absence of the victim's appreciation that he was armed. It is clear from Mrs. Calva's testimony that she did not attach any special significance to this conduct and certainly did not perceive it to be in any way threatening. In fact, she did not even mention this particular conduct during her testimony until the prosecutor specially raised it by a leading question. Since the appellant's subjective intent does not control what is objectively conveyed to another, a hand under a shirt has no meaning in the context of the aggravated robbery statute unless the victim at least perceives it to be menacing.

Id. at 275, 600 S.W.2d at 17. Mr. White argues that, as in *Fairchild v. State*, *supra*, the victim in the case did not perceive that he was actually armed with a deadly weapon.

Contrary to Mr. White's argument, this case is significantly distinguishable from *Fairchild v. State*, *supra*. Unlike the facts of that case, Mr. White verbally conveyed to the victim that he possessed a gun. Moreover, the victim in this case clearly understood the representation given his testimony that he is afraid of guns, that he felt threatened and quickly retreated, and that he thought Mr. White was reaching for his gun when making the statement.

We agree with the State that this case is more like *Clemmons v. State*, 303 Ark. 354, 796 S.W.2d 583 (1990). In that case the victim testified:

> Well, I had my keys in my hand and I went to my car. And by that time, when I started to put my key in the car, they had gotten behind my car and one of them walked up to me and he had his – well, I assumed it was his finger in his jacket and he said, "I've got a gun. Give me your purse or I'm going to shoot you."

In affirming Clemmons's conviction, the supreme court announced:

> We hold that where a defendant verbally represents that he is armed with a deadly weapon that this is sufficient to convict for aggravated robbery regardless of whether in fact he did have such a weapon. Where no verbal representation is made and only conduct is in evidence, the focus is on what the victim perceived concerning a deadly weapon.

Id. at 357, 796 S.W.2d at 585.

Turning again to the case at bar, there was evidence of both a verbal representation as well as conduct by Mr. White representing that he was armed with a deadly weapon. This satisfied the aggravated robbery statute, particularly in light of Mr. Ross's testimony that

although he thought Mr. White might be bluffing, he did not know whether Mr. White possessed a gun and took the threat seriously in the interest of his own protection. Because there was substantial evidence to support the conviction, we affirm the judgment of the trial court.

Affirmed.

GRIFFEN and CRABTREE, JJ., agree.